time jurisdictions, but also and more especially from the internal necessity of the case, that there must be a common law of the United States separate and distinct from that of the several States; that in the absence of statutory regulation by Congress, this national common law with the national system of equity and maritime law, affects and controls all legal relations as to which the Federal Government has exclusive jurisdiction.

Judge Shiras does not deny that the national jurisdiction in the regulation of interstate commerce is exclusive, and that therefore neither the statutory nor the common law of the several States can affect this subject-matter. But here the lines of reasoning diverge. Judge Grosscup, starting from the hypothesis that there is no national common law, gives an opinion, the natural and logical conclusion from which would be that before the Interstate Commerce Act, interstate commerce was entirely without legal sanction of any kind whatsoever; that therefore, not only was there no obligation imposed upon the common carrier, such as existed under the common law of England, to charge no more than reasonable rates or to carry for any one who offers to pay his charges, but, even in case of a contract to carry and a breach thereof, there could be no recovery because the contract itself would be without the sanction of any law. True it is, Judge Grosscup does not state these conclusions in his opinion, but they are the logical deductions therefrom.

Judge Shiras thinks, however, notwithstanding various *dicta* of the Supreme Court of the United States, that there is a common law of the United States distinct and separate from that of the several States; that before the Interstate Commerce Act was enacted, the common law of England, as it stood at the time of the Revolution, modified by the changed conditions of our country, governed and controlled all legal relations such as interstate commerce, as to which national regulation is exclusive; that therefore a common carrier was not only bound to accept goods for interstate commerce carriage from any person offering to pay reasonable charges, but that such carrier was also bound not to charge in excess of a reasonable rate, and that, under the sanction of the common law, excessive charges could be recovered back. The decision does not touch upon the effect of the Interstate Commerce Act, because the alleged overcharges were made before that Act went into effect.

Another interesting, though in no way doubtful point, decided in this case is that an action for the recovery of these excessive charges can be maintained in the State courts, and that the national exclusive control of interstate commerce does not, in the absence of statutory regulation to the contrary, give the Federal courts exclusive jurisdiction of causes arising out of interstate commerce transactions.

In this connection the valuable article of Professor Blewett Lee of the Northwestern University Law School, in 2 Northwestern Law Review, page 200 "Is there a Federal Common Law?" is worth noting. In it the opinion of Judge Grosscup in the Swift case is subjected to a powerful criticism, and a line of thought developed from an exhaustive review of the Federal authorities in accordance with that now expressed by Judge Shiras in the Murray case.

DISPATCH,—The method of hearing argument by talking *to* counsel seems to be in vogue in England to-day, and the appellate courts seem to be on the *qui vive* for bad law and frivolous motions, ready to dis-

courage all but cases which they think worth arguing. This. if restrained by a wary anxiety to see any real chance of doubt and then allow full argument, must go far in weeding out from the rest really hopeless appeals, and so in adding to the speed and popularity of litigation. To give an instance of the new method, it is said that a plaintiff, an attorney, recently appeared *pro se* moving for a new trial of a libel action on the ground of misdirection. A bill had been sent him for an account which he had paid, and it had been opened by a clerk,— that was his libel. After he had argued five minutes, Lord Esher leaned foward and this is the substance of his remarks :—

"Mr. ———, if your complaint had been demurred to, the demurrer would have been sustained; if, at the trial, a motion for a nonsuit had been made it should have been granted ; failing that, the jury ought to have found against you, as they did." Then, leaning back again, he added, after a moment : "But I'm open to conviction. I'm open to conviction."

In some hands this might do injustice. Even if the plaintiff had had a case for argument such a greeting might have diminished the force of his logic.

CAN A MURDERER ACQUIRE A TITLE BY HIS CRIME?— In 4 H. L. R. 394 the opinion was expressed that one who murdered another in order to inherit the latter's property acquired the legal title, but should be treated as a constructive trustee for those who suffered by his crime. That is in accordance with well-known equitable principles and reaches a just result. It would prevent the murderer from profiting by his crime, but would protect a purchaser for value without notice. Hitherto this view, while not adopted by the courts, has not been distinctly rejected by them. They have reached the same practical result, but by means which seem unjustifiable. In *Riggs* v. *Palmer*, 115 N. Y. 506, where the controversy was between the criminal and the representatives of the murdered man, the court read into the statute of wills a revocation clause. That would seem to carry judical legislation too far. No considerations of humanity and natural justice can authorize a court to read an exception into a statute which is plain and definite in its terms. *Shellenberger* v. *Ransom* (Nebraska, 1891), 47 N. W. R. 700, followed the New York case and held that a purchaser from a murderer took nothing, because the murderer had nothing to give. Here an exception was read into the statute of descent, a course open to the same criticism as that just offered upon *Riggs* v. *Palmer*. In June, 1894, the Nebraska court reviewed their decision (59 N. W. R. 935), and concluded to go to the opposite extreme. They decide, and correctly it would seem, that the purchaser from the murderer acquires a legal title. But they go on and hold that he gets not only the legal title, but the beneficial interest as well, although he took with notice of the murder. This is a result which is not only "undesirable," as the court say, but in violation of the plain equitable principle that one who acquires a legal title by fraud or other unconscionable conduct shall be treated as a constructive trustee for those whom he has wronged. The court seems to feel bound by the terms of the statute of descent. But that misconception is probably, as pointed out in 4. H. L. R. 394, one of the results of the fusion of law and equity.

It may be worth while to observe that the civil law, to which frequent reference is made in these cases, does not treat the will as revoked or the